

Utah Water Legislation Information

WHAT ARE THIS YEAR'S BIGGEST WATER LEGISLATION ISSUES AND WHY ARE THEY IMPORTANT?

EXTRATERRITORIAL JURISDICTION

[Utah §10-8-15]

Extraterritorial jurisdiction is the legal ability of a government to exercise authority beyond its normal boundaries. Since natural water boundaries are often very different from political boundaries, extraterritorial jurisdiction plays an important role in water management nationwide. An upstream community's failure to protect rivers, wetlands, and reservoirs can jeopardize the public health of downstream communities; extraterritorial jurisdiction gives downstream communities an essential voice in the management and protection of important upstream water sources.

Utah's water law currently gives all cities the authority to pass and enforce regulations outside their city to protect their drinking water source 300 feet from the stream for 15 miles above the source. Cities of the first class, including Sandy, are granted extended jurisdiction which covers the entire watershed above its drinking water sources. The proposed amendment allows downstream cities to retain a voice in upstream water management, but adds the stipulation that requires cities of the first class to have an agreement with local regulatory entities upstream prior to exercising protective measures in extraterritorial upstream counties. Sandy supports this amendment as written.

SURPLUS WATER SALES & LEASING

[Utah Constitution Article XI, Section 6]
[Utah §10-8-14 and Utah §10-8-22]

The law that regulates water leasing and sales in Utah has been effective for over 100 years. Utah cities have successfully used conjunctive management and surplus water contracts for many decades to allow for development, growth, and to ensure the delivery of safe water throughout the State of Utah.



The proposal would amend the Utah Constitution to: eliminate a city's restriction against leasing its waterworks, water rights, or sources of water (H.J.R. 15). Sandy's position is that new legislation should not interfere with a city's ability to enter into agreements to purchase or sell water. It is also worth noting that Sandy benefited from these types of arrangements during its own large growth phase. These agreements are an important tool that will allow other cities and developments to benefit in the future.

PRIVATE PROPERTY

Private landowners have expressed a desire and preference for more clarity in the water rights acquisition process, with one primary entity functioning as the final decision-making body.

Although this topic will not be accompanied by a specific proposed amendment for this year's legislative session, the Executive Water Task Force did generate recommendations that are rooted in extensive discussion among many of the state's water experts.

The suggested path forward includes funding and coordinating efforts with established programs like Utah Open Lands and the LaRay McAllister Critical Lands Conservation Fund in order to help identify and clarify best practices and processes for potential land purchase. The best way to ensure the delivery of clean and healthy water to Utah's citizens is to protect it at the source. The purchase of properties that impact public watershed areas is one viable option to include in the water management dialog.

Sandy supports working with established programs and entities to purchase private property for the purpose of critical watershed protection.

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BACKGROUND & PURPOSE

The purpose of this document is to inform our public, customers, administration, and legislative representatives of important water related health, sustainable growth, and quality of life issues.

Several proposed changes to Utah water law are under consideration for 2019 legislation. The proposed legislation has gone through a robust vetting/consensus process under guidance from Utah Natural Resources Director, Mike Styler, along with input and consensus from nearly every major water stakeholder and expert in the State of Utah. Some proposals discussed during the process would negatively impact public water supplies and/or benefit a few private individuals at public expense. The legislation that is being recommended addresses legitimate water needs and concerns, including support of transparency, equal protection, good stewardship of resources, and accountability to the public.

These changes warrant careful consideration because the resulting decisions and legislation will impact the quality and reliability of Utah's water supply for generations to come, as well as our cost and ability to deliver clean and healthy water for our existing and growing communities.

Most people agree reliable, safe, and affordable drinking water is one of our most valuable resources. Sandy City has a long history of progressive and collaborative water management with other Utah communities that has allowed us to grow and prosper. Now, as we look to the future, projected growth and climate change bring emerging vulnerabilities; these areas present both new challenges and new opportunities to evaluate how we manage our water supply.

The following pages summarize some of the current regulations under consideration, including background discussion, facts, and information key to understanding water in Utah. A summary of Sandy City's position is presented as well.

PRIMARY WATER ISSUES FOR 2019

The primary items addressed with proposed legislation include:

- **Extraterritorial jurisdiction** for protection of drinking water sources
- **Constitutional amendment** and statutory changes on **surplus water sales** to affirm cities' ability to sell or lease water outside their city limits in years with surplus water
- **Private property** purchases for Wasatch Front drinking source watershed areas

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GENERAL WATER FACTS

❖ KEEP IT PURE™

- The most effective and safest way to deliver clean drinking water is to prevent source water contamination.
- Water treatment removes 99.99% of waste, but never 100%.

❖ We All Live Downstream©

- Nearly every home and business in Salt Lake County can receive water from Wasatch Front streams through sharing water supplies including Metro Water of Salt Lake & Sandy and the Jordan Valley Water Conservancy District.
- ❖ It can take less than 8 hours for the water you see in Little Cottonwood Creek or Bell Canyon to reach a Sandy home or business. Water in the Provo River below Deer Creek Reservoir can take 24 to 72 hours to reach Salt Lake County homes. Water above Deer Creek dam can take days to years to reach drinking taps in Utah and Salt Lake counties.
- ❖ All water sources have different levels of risk, source protections, and treatment needs. Fast streams can take just hours to carry live bacteria and pollutants downstream. Slow streams and reservoirs have time for bacteria to die, dilute, and ability for operators to detect contamination, clean up a spill, adjust water treatment, or, if necessary, to shut down a treatment plant and turn on alternate sources.
- ❖ Source protection helps eliminate “emerging contaminants” and “pollutants of concern” such as prescription drugs, personal care products and industry wastes observed in water downstream from urban areas.

- ❖ Proximity to population centers higher pressure and risk on water source areas. Many cities have instituted ordinances and rules for protection of their drinking source watershed areas (including Seattle, Boston, New York, Santa Fe, Portland, Orem, Draper, Salt Lake City, Sandy and other Utah cities).
- ❖ An upstream community's failure to protect rivers, wetlands, and reservoirs can jeopardize the public health of downstream communities. Increased pollution of waterways has real potential to increase illness and death in downstream communities among very young, elderly, and immune compromised persons.
- ❖ Some human industry wastes, chemicals and emerging contaminants are not easily treated and can pass through water treatment plants.
- ❖ Canyons that allow dogs test significantly higher for fecal contamination in the water than watersheds where dogs are not allowed. Dogs and domestic animals can transmit human disease. Wild animal waste does not.
- ❖ Most cities and water providers in Utah have multiple sources of water in case one supply is interrupted by emergency or maintenance (e.g. contamination, flood, watershed fire, well or other source failure).
- ❖ “Surplus water sales” refers to sharing water between entities to improve water management and reliability for all cities and communities. Most cities have agreements to sell surplus water to other cities, individuals, or groups outside their city limits. This practice also allows communities and individual property owners to develop and grow when other water sources are not available or would be far more expensive.
- ❖ Utah law does not allow speculation or hoarding of water rights. A city may only hold water rights reasonably needed to meet the future supply of the public they serve.

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SANDY WATER FACTS

- ❖ Sandy grew rapidly in the 1970's, to the point where there was not enough water for growth. For a time, there was a moratorium on development unless the developer provided its own water. This is similar to what other fast growing cities in Utah are doing today.
- ❖ Sandy has strategically expanded its water supply over the past 30 years, including joining Metro Water District of Salt Lake & Sandy (Metro Water) in 1990.
- ❖ Sandy has invested over \$150 Million in acquisition, management, and protection of a diverse and robust water portfolio to assure our future sustainability and growth. The portfolio is roughly divided as follows:
 - 1/3rd direct stream flow (no storage) from Sandy water rights in Little Cottonwood and Bell Canyon Creeks
 - 1/3rd storage in Deer Creek Reservoir on the Provo River through Metro Water
 - 1/3rd groundwater in aquifer below Sandy
- ❖ Through planning and strategic investment, Sandy has enough water to weather a multi-year drought (unless a major source is lost).
- ❖ Sandy has lost five wells to contamination from careless business chemical and salt storage.
- ❖ Preventing contamination of source waters is a high priority. It is the least expensive and most effective way to maintain the reliability, quality and affordability of our water.
- ❖ In years of high water supply, Sandy replenishes water storage in reservoirs and aquifers. When possible, surplus water is shared through conjunctive management with other water agencies. In turn, other agencies can make their surplus water available when they have water in Sandy's time of need.

- ❖ Water conservation in Sandy has resulted in 23% water use reduction since 2000 from 300 to 231 gallons per capita per day (gcpd).
- ❖ Sandy's water service area includes customers outside the City limits. Making Sandy water available allowed them to develop and grow where other water was either not available or very expensive. These customers receive the same level of quality service as residents and are treated the same during drought. They do not pay the same water tax as residents so they have higher water rates for equity in costs/revenue.

SANDY'S WATER GOALS

- ❖ Preserve and protect our investment in water resources to provide the highest quality, most reliable, efficient water for existing and future customers in Sandy's service area.
- ❖ Serve as a leader in thought and action with Utah's ongoing water dialogue, legislation, conservation, and stewardship efforts.
- ❖ Remain a committed partner to conjunctive water use and management to benefit Sandy, our neighbors, and the environment.
- ❖ Specifically, improve our water resilience by:
 - Expanding and investing in conservation programs to reduce water use to 200 gcpd by 2040 (13% below current use).
 - Implementing programs to divert and store water in the groundwater aquifer during surplus wet years for use during long drought periods.
 - Strengthening surplus water sales options between water providers for resiliency and efficient water management.
 - *NOTE: If successful, Sandy may save 2,500 acre feet of future water purchases at a cost over \$57M.*

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EXTRATERRITORIAL

JURISDICTION [UTAH §10-8-15] is the legal ability of a government to exercise authority beyond its normal boundaries. In Utah, the extraterritorial jurisdiction water law gives all cities in Utah the authority to pass and enforce regulations outside their city to protect their drinking water source within 300 feet from the stream and for 15 miles above the source. Utah's cities of the first class, including Sandy, are granted an extended jurisdiction which covers the entire watershed above its drinking water sources.

An upstream community's failure to protect rivers, wetlands, and reservoirs can jeopardize the public health of downstream communities. Although the science of water treatment continues to advance, the truth is that water treatment is *never* 100% effective. Any treated water is compromised water. The most effective way to assure pristine drinking water is to keep it pure at the source.

Currently, Sandy works closely with the Salt Lake County Health Department and Salt Lake City to regulate its most vulnerable watersheds in Little Cottonwood and Bell Canyon. In addition, the Provo River Watershed Council oversees a cooperative partnership between its member agencies (including Metro Water, Jordan Valley Water Conservancy, Central Utah Water Conservancy, and Wasatch County) and other land use and water quality stakeholders to protect our Provo River drinking water. Since approximately 85% of Utah residents receive drinking water from the Provo River, the cooperative work of this council is invaluable.

The proposed legislation mandates the continuation of collaborative water decision making. The statute requires cities of the first class to have an agreement with local regulatory entities upstream prior to exercising protective measures in extraterritorial upstream counties. This change should help to alleviate potential conflicting source water regulations, as well as streamline land use authority coordination and development. However, an important stipulation is that if upstream land authorities fail to protect a drinking water source, downstream water providers retain the right to intervene and enforce practices to protect water quality. Public health is, and must remain, the highest priority.

FACTS:

- ❖ *A large percentage of drinking water in Salt Lake Valley comes from direct streamflow from the Wasatch canyons, and 85% of Utah residents receive drinking water from the Provo River.*
- ❖ *Increased treatment in lieu of watershed protection could more than double water costs, would result in poorer water quality, and introduces a higher risk of illness and death among at risk populations.*
- ❖ *Development and recreational pressure in the Wasatch front canyons will increase risk to water contamination and public health.*
- ❖ *The importance of protecting source water is recognized nationally. Seattle, Boston, New York, Portland, San Francisco, and Santa Fe are a few examples of major metropolitan areas that have fully protected their water supplies by making them inaccessible to the public.*
- ❖ *One quart of oil can contaminate up to a quarter of a million gallons of drinking water or cause an oil slick nearly 2 acres in size.*

SANDY'S POSITION

Clean water is essential to supporting a vibrant and healthy population. Sandy strongly supports retaining extraterritorial jurisdiction over its direct stream sources in the Little Cottonwood and Bell Canyons. All Utah cities must be allowed to protect their water supply.

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CONSTITUTIONAL AMENDMENT TO AFFIRM CITY SURPLUS WATER SALES

Impacts: *Utah Constitution Article XI, Section 6*

Utah §10-7-14

Utah §10-8-14

Utah §10-8-22

This discussion stems from a 2018 proposal to amend the Utah Constitution. The statute under question has been in place for over 100 years. Historically, this statute has been interpreted to allow for water leasing when one city has surplus water, and another city or entity outside that city limits would like to lease that surplus water when it is available. However, cities that do not hold water rights have expressed concern about preferential treatment for the cities that hold water rights. The proposed constitutional amendment would provide certainty for leasing cities on the terms, risk, and reliability of leased water supplies. It reads, “This resolution proposes to amend the Utah Constitution to: eliminate a restriction against a municipal corporation leasing its waterworks, water rights, or sources of water” (H.J.R. 15).

Sandy City has been on both sides of water leasing agreements. In the 1970s Sandy City had to curtail development due to the fact that proposed growth would exceed its short-term ability to deliver water. After this, Sandy set out to diversify its water investments, and through the 1990s and 2000s Sandy benefited from Salt Lake City’s surplus water while continuing to expand and diversify its own water portfolio through measures such as passing a \$13 million bond to purchase additional water.

After decades of diligent water planning, Sandy has secured enough water to create its own water surplus. Sandy has provided water to the historic Union Jordan area of Midvale and other areas outside the City. These agreements have allowed those areas to pursue their own growth while benefiting from affordable and safe water, and they helped Sandy operate the most efficient water system for the broader community at that time. If water had not been made available they would not have been able to develop, or would have had to pay much higher cost for less desirable water supplies.

FACTS:

- ❖ Utah cities have successfully used conjunctive management and surplus water contracts for many decades to allow growth and ensure the delivery of safe and affordable water throughout the state of Utah.
- ❖ Sandy leased surplus water from Salt Lake City through Metro while growing the northwest quadrant of the city of Sandy. During this time, Sandy secured the water needed to support a healthy city even during drought years, and enacted water conservation measures to ensure enough water to support growth.
- ❖ The Utah League of Cities and Towns conducted a poll in 2018 to see how many cities have surplus water contracts. They found a very large percentage of cities and towns do have surplus water contracts.
- ❖ There are many unique reasons for surplus water contracts, and there are many types of surplus agreements. The agreements are designed to meet the specific needs of the cities involved.

SANDY’S POSITION:

New legislation should not interfere with a city’s ability to enter into agreements to purchase or sell surplus water. Sandy supports water rate differentials that are based on cost-of-service, and may account for city resident investment in the water system.

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PRIVATE PROPERTY

The existence of “dry lots” and the extra layer of water regulation in watershed areas can be a source of contention between private property owners and the cities who are charged with protecting the water that passes through these watershed areas. The surest way to protect health through drinking water quality is to prevent water contamination. The surest way to prevent contamination is to regulate and limit the activities, chemicals, and development in the water source areas that have greatest impact on water quality.

The goal of this discussion is to move toward clarification in regard to expectations for purchasing water rights and the resolution of conflicts surrounding water rights for private landowners, particularly in the Salt Lake County watersheds. The state’s ombudsman clarified that a lot that was purchased without water rights (commonly referred to as a “dry lot”) does not come with a reasonable expectation to acquire water rights in the future. He also clarified that no private person or public entity can be forced to sell a water right nor to provide water outside the city limits.

One of the main proposals for resolution revolves around the idea of funding and utilizing land purchase programs that will allow cities and groups with water preservation interests to buy out privately held land in key watershed areas. This topic is particularly relevant to properties in the Cottonwood Canyons.

Funding sources for potential land purchase have not yet been entirely defined; grants and tax incentives are being proposed as potential options. Additionally, programs such as Utah Open Lands (and other local land use authorities) would be willing to assist in the process of legal and equitable private land acquisition.

FACTS:

- ❖ Public (government) entities cannot pay more than the fair market value of a dry lot “as is” (meaning the value of a lot that is not developable).

SANDY’S POSITION:

Sandy supports the acquisition of private property to protect watershed areas. Further, Sandy supports the use of established funding programs to acquire private property to protect watershed areas, with transparency throughout the process. Coordinating efforts with established programs like Utah Open Lands and the LaRay McAllister Critical Lands Conservation Fund will help to clearly identify best practices and processes for potential land purchase.